

## **REQUEST FOR APPROVAL**

**To:** Mark Leary  
Acting Director

**From:** Howard Levenson  
Howard Levenson  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** March 15, 2011

**Decision Subject:** Approval to Formally Notice Proposed Product Stewardship for Carpet Regulations

**Action By:** March 15, 2011

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**Summary of Request:** Staff requests approval to begin the formal rulemaking process and formally notice proposed Product Stewardship for Carpet Regulations needed to implement the carpet stewardship law ([Chapter 681, Statutes of 2010 \[Perez, AB 2398\]](#)).

**Recommendation:**

Staff recommends approval of the "Proposed Product Stewardship for Carpet Regulations" so that it may be forwarded to the Office of Administrative Law and the formal regulatory process may begin.

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**Action:**

On the basis of the information and analysis in this Request for Approval and the findings set out above, I hereby approve the "Proposed Product Stewardship for Carpet Regulations" and direct staff to forward the regulatory packet to the Office of Administrative Law so the formal regulatory process may begin.

**Dated:** 3/28/2011

Mark Leary  
Mark Leary  
Acting Director

**Attachments:** Proposed Product Stewardship for Carpet Regulations

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## Background Information, Analysis, and Findings:

To implement Assembly Bill 2398 of 2010, the Department has responsibility to approve or disapprove of carpet stewardship plans submitted by manufacturers or their designated product stewardship organization; review annual reports to verify that the objectives of the plan are being met, and provide oversight and enforcement to ensure a level playing field among carpet manufacturers. For manufacturers to be in compliance, they must have an approved plan and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in a stewardship plan. Enforcement is addressed through a combination of civil penalties for non-compliance and transparency that allows all stakeholders and the public to evaluate progress. Additionally, carpet manufacturers and/or stewardship organization(s) shall pay CalRecycle an administrative fee to cover the cost of its service that may not exceed five percent of the aggregate assessment collected.

To carry out these responsibilities, the Department seeks to promulgate regulations that add clarity and administrative procedures covering: definitions; submittal instructions; stewardship plan approval criteria; criteria for acceptance of annual reports; the establishment of a progressive enforcement approach; records retention; proprietary, confidential or trade secret information; and a process for CalRecycle to accept payment for its services related to oversight and enforcement activities.

Staff have met with numerous stakeholders, participated in the national Carpet MOU process, and conducted a public workshop on February 22, 2011 to share informal draft regulatory text. Comments from the public have been incorporated into the "Proposed Product Stewardship for Carpet Regulations" (Attachment 1). The primary concerns expressed by stakeholders about the draft regulatory language and staff's response to these concerns are briefly summarized here:

- **Carpet as an Alternative Fuel:** Viewpoints vary among stakeholders on the use of unwanted carpet as a fuel. Staff incorporated a definition of Carpet as an Alternative Fuel (CAAF) that says CAAF must be processed to recover reusable/recyclable materials, before being used as fuel. It further indicates that CAAF is not recycling, but may count as a form of diversion. The definition of "recycling" was removed as it is already in current statute and no clarification is needed and the term "diversion" was adjusted to be consistent with current state laws and regulations.
- **Scope:** Several stakeholders asked whether synthetic turf and indoor-outdoor carpets were covered under AB 2398. Staff added definitions that would exclude synthetic turf, which is used primarily in outdoor settings as a replacement for sod, and include indoor-outdoor carpet which is used inside and outside of buildings and is made by carpet manufacturers. Another unclear term is "rugs", which appears in AB 2398 without definition. Staff added a definition that would define flooring originally made as carpet to remain as carpet, even if it is cut into smaller portions.
- **Identification of polymer type:** Several stakeholders commented on the need for those removing old carpet to be able to readily identify the polymer type. Some suggested that labels should be added to the back of carpet for this purpose, while others suggested that hand-held devices would more feasible and efficient. Staff investigated this idea and modified the language so the plans must describe how service providers handling old



carpet will be able to readily, accurately, and economically identify the type of carpet polymer to facilitate reuse and recycling. CalRecycle does not recommend specifying a technology or approach in regulation, thereby allowing flexibility over time, but it would require that plans address this issue.

- **Adherence to the solid waste management hierarchy:** Several stakeholders identified places where the informal draft regulatory text could be modified to better align with the solid waste management hierarchy. Staff incorporated these edits.
- **Scope of audit reports:** Staff added language clarifying the scope of audits. State government agencies typically receive more than financial information from CPAs preparing audits. Additional audited information is often presented in a separate state compliance report, and staff added language for this type of information to be included in audits as well. For example, a CPA could provide information on whether or not the program met other requirements such as attainment of goals in the plan.
- **Records retention:** Staff added language on additional records that need to be retained for enforcement purposes. In addition to wholesalers' and retailers' records on carpet sold or offered, records also are needed on dates of sales and the assessment fee collected.

After the CalRecycle public workshop on February 22, CARE publically discussed its work to date in developing the stewardship organization and program. At both the CalRecycle workshop and the CARE stakeholder consultation, stakeholders raised a number of additional issues related to program implementation. These included:

- **Overall implementation details.** Most questions sought clarity of stewardship plans and program implementation, particularly the funding mechanism and incentives, provided in CARE's presentation. Staff understands that CARE is planning a follow-up webinar on these topics.
- **Incentive payments.** Many stakeholders are concerned about the incentives being the same for filler and carpet as an alternative fuel. To align with the solid waste management hierarchy, incentive payments for a recycled material should be higher than material used as fuel, if incentive payments are provided to the latter.
- **Retailers.** CARE is starting outreach efforts to retailers. Several stakeholders were concerned about the lack of retailer participation thus far.
- **Outreach.** Several stakeholders suggested additional groups that need to know about carpet stewardship in California and offered ideas to CARE on how to reach them.

These are all important issues that CARE will need to address in the stewardship plan it submits to CalRecycle. However, these issues are outside the purview of the regulatory package that is the subject of this Request for Approval and hence are not discussed further herein.

Approval of this "Proposed Product Stewardship for Carpet Regulations" Request would allow staff to file the regulatory package with the Office of Administrative Law and, when that is published by OAL, to initiate the formal rulemaking process. CalRecycle staff anticipates that the formal process will begin in April 2011. The regulatory process is scheduled to be completed in December 2011. The law requires that carpet stewardship plans be approved by March 31, 2012. A tight schedule must be maintained to meet this deadline.

